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09/925,021	08/09/2001	Minekazu Sakai	01-186	2499

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POSZ & BETHARDS, PLC
11250 ROGER BACON DRIVE
SUITE 10
RESTON, VA 20190

EXAMINER

CHAPMAN JR, JOHN E

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/925,021
Filing Date: August 09, 2001
Appellant(s): SAKAI ET AL.

David G. Posz
For Appellant

MAILED
JAN 13 2004
GROUP 2800

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 24, 2003.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

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(7) *Grouping of Claims*

The rejection of claims 19 and 20 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

6,450,031

Sakai et al.

9-2002

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Sakai et al. Sakai et al. discloses a semiconductor dynamic quantity sensor in Fig. 1 comprising a weight 15 having movable electrodes 16 and 17 supported by a frame member 5 through beam portions 14a and 14b, and fixed electrodes 20 and 24 supported by the frame member 5 and defining detection intervals CS1 and CS2 (in Fig. 6). Sakai et al. teaches forming the frame member 5 as a square plate having a square through hole 8 formed in the middle thereof. Note col. 8, lines 48-51. Since the frame member 5 is square, it has a width in the X direction equal to the width in the Y direction. Consequently, the difference between the first width and the second width is zero,

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which is less than 15% of the width of the frame member. Regarding claim 20, zero is less than 10% of the width of the frame member.

Furthermore, to the extent that a square through hole 8 is formed in the middle of plate 5 (col. 8, lines 48-51), the width between the outer edge of plate 5 and the hole 8 on the left side in Fig. 1 (i.e., in the Y-direction) is equal to the width between the outer edge of plate 5 and the hole 8 on the right side (i.e., in the Y-direction). Consequently, the difference between these widths is zero. Finally, to the extent that a square through hole 8 is formed in the middle of a square plate 5, the widths between the outer edge of plate 5 and the hole 8 on all sides in Fig. 1 are equal, and hence their differences would be less than 15% of the width.

(11) Response to Argument

Applicant argues that Sakai et al. fails to disclose that the difference between the “top” and “bottom” width is 15% or less. While Sakai et al. appears to show a difference between the “top” and “bottom” widths in Fig. 1 (i.e., in the X-direction), applicant’s argument is more specific than the invention claimed, since the claims do not specify that the difference between the “top” and “bottom” widths must be 15% or less. Rather claim 19 specifies only that the difference between some first width and some second width of a frame member be 15% or less. Thus, it is sufficient to anticipate the claim that the overall width of plate 5 in the X direction is equal to the overall width in the Y direction (i.e., that the plate 5 is square), or that the “left” width is equal to the “right” width (i.e., that hole 8 is formed in the middle of plate 5).

Applicant argues that Sakai et al. does not discuss the importance of the need for uniformity of the widths so that the displacement amounts of the fixed electrodes become

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uniform. However, as explained by the applicant in the appeal brief, in order to make the displacement amount of the fixed electrodes uniform, the widths of support substrate 140 in the horizontal direction in Fig. 9A is made uniform ($B1=B2$) as well as the widths in the vertical direction X ($A1=A2$). This, again, is more specific than the invention claimed, since the claims are not limited to the widths of support substrate being uniform ($B1=B2$ and $A1=A2$). Accordingly, that the displacement amounts of the fixed electrodes are uniform is more specific than the invention claimed.

Applicant argues that Sakai et al. obtains a stable sensor output by providing fixed electrodes having a root portion width ($W1$) narrower than the width ($W2$) of the fixed electrodes proper. Such argument is more specific than the invention claimed, since the claims do not preclude fixed electrodes having a root portion width ($W1$) narrower than the width ($W2$) of the fixed electrodes.


Applicant argues that the invention was not described in a patent by another before the invention by the applicant for patent, since the patent and application were at the time of the invention commonly assigned. However, a U.S. patent by a different inventive entity, whether or not the application shares some inventors in common with the patent, is *prima facie* evidence that the invention was made "by another" as set forth in 35 U.S.C. 102(e). See MPEP § 2136.04 and § 2137.01. While 35 U.S.C. 103(c) provides that subject matter developed by another which qualifies as "prior art" only under 35 U.S.C. 102(e), (f) and (g) is not to be considered when determining whether an invention sought to be patented is obvious under 35 U.S.C. 103, provided the subject matter and the claimed invention were commonly owned at the time the

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invention was made, it does not affect subject matter which qualifies as anticipatory prior art under 35 U.S.C. 102, including 35 U.S.C. 102(e). See MPEP § 706.02(I)(1).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


John E Chapman
Primary Examiner
Art Unit 2856

jec
January 7, 2004

Conferees
Hezron Williams 
Olik Chaudhuri 

LAW OFFICES OF DAVID G. POSZ
2000 L STREET, N.W.
SUITE 200
WASHINGTON, DC 20036